

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3133 OF 2005

JUDGMENT:

Having got dissatisfied with the award of Rs.91,000/- as compensation by the order dated 26.09.2005 in M.V.O.P. No.289 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Srikakulam (for short, 'the Tribunal') as against the claim of Rs.2,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the appellant-petitioner in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 to 3 herein, who are the driver of the bus bearing registration No.AP 10Z 3150, Depot Manager of Palasa Depot and Managing Director of Andhra Pradesh State Road Transport Corporation (for short, 'respondent-Corporation'), respectively, are respondent Nos.1 to 3, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that the petitioner, who was aged 40 years, running a saw mill earning a sum of

Rs.5,000/- per month and on 28.10.1999 at about 9-15 a.m., he started on his motorcycle at Ranasthalam to reach Srikakulam and when he reached Ravivalasa village junction on National Highway No.5, an RTC bus bearing registration No.AP 10Z 3150 driven by respondent No.1 in a rash and negligent manner at high speed coming in opposite direction, dashed the motorcycle, due to which, the petitioner received multiple injuries and he was immediately shifted to Government Hospital, Srikakulam, and later shifted to King George Hospital, Visakhapatnam, where he had undergone surgical intervention. The petitioner, claiming that he suffered pain and suffering and spent huge amount towards medical expenses, sought a sum of Rs.2,50,000/- as compensation from respondent Nos.1 to 3.

5. Respondent Nos.1 and 2 remained *ex parte*. Respondent No.3-Managing Director of respondent-Corporation filed counter opposing the claim.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner besides examining himself as P.W.1, examined two doctors as P.Ws.2 and 3, besides marking Exs.A.1 to A.13 and Ex.X.1 to substantiate his claim; whereas, on behalf of respondent No.3, respondent No.1-driver was examined as R.W.1 and no documents were filed.

7. On appraisal of the evidence on record, the Tribunal held issue No.1 in favour of the petitioner; and on issue No.2, taking the disability of the petitioner as 15% as spoken to by P.W.3 and the income at Rs.2,000/- per month and applying multiplier '15', arrived at Rs.54,000/- towards partial permanent disability, besides granting a sum of Rs.20,000/- towards medical expenses, Rs.10,000/- towards mental agony and pain and suffering and Rs.7,000/- towards loss of income during the period of treatment as inpatient and, thus, granted a total sum of Rs.91,000/- with interest at 7.5% per annum from the date of petition till realization.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence on record, more particularly, the doctors examined as P.Ws.2 and 3 and, though, he was twice operated and bedridden for more than 3½ months, the Tribunal has granted meager amount of Rs.91,000/- and without there being any basis reduced the disability from 40% to 15% and awarded interest only at 7.5% as against 12% and, therefore, sought to grant the balance amount.

9. Heard Sri A. Ravi Shankar, learned counsel for the appellant-petitioner. Despite service of notice on respondent Nos.1 to 3, none appears for them. Even before the Tribunal, respondent Nos.1 and 2 remained ex

parte.

10. Perused the order and the evidence available on record. So far as nature of injuries sustained by the petitioner is concerned, it is not in dispute. So far as the disability is concerned, 15% is taken by the Tribunal as against 40% spoken to by P.W.3 concerning limb of the right knee joint, but no basis is to be found as to how the Tribunal has arrived the disability at 15% and the same can be taken as 25%. So far as the income is concerned, the Tribunal has taken Rs.2,000/- per month. The petitioner's evidence would show that he was running a saw mill and certain documents have been placed on record, more particularly, Ex.A.9 dated 26.05.2004, which is a letter addressed by the Divisional Fire Officer, Visakhapatnam dated nil-03-2004 in Rc.No.1200/B2/2004 to the owner of Sri Rama Saw Mill, Ranasthalam, and Ex.A.8, which is the order of the Assistant Commercial Tax Officer, Rajam. When kept in view, the same, the amount of Rs.3,000/- per month or Rs.36,000/- per annum can be taken as the earnings of the petitioner. In which case, partial permanent disability would work out to Rs.1,35,000/- ($\text{Rs.36,000/-} \times 15 \times 25\%$). This apart, the amounts granted by the Tribunal, i.e., Rs.20,000/- towards medical expenses and Rs.10,000/- towards pain and suffering are maintained. So far as the amount of Rs.7,000/- granted by the Tribunal towards temporary loss of earnings for a period of three months is concerned, the

petitioner would have required atleast four months for regaining normalcy. Therefore, @Rs.3,000/- per month, a sum of Rs.12,000/- is granted towards temporary loss of earnings for a period of four months. Towards extra nourishment, no amount is granted by the Tribunal. Therefore, a sum of Rs.5,000/- is granted under the said head.

11. Thus, the petitioner is entitled to a total sum of Rs.1,82,000/- (Rupees one lakh and eighty two thousand) as against Rs.91,000/- granted by the Tribunal towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 7.5% per annum and the same is maintained on the entire amount of compensation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A. SHANKAR NARAYANA, J

20th April, 2016

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